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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 TRENTON QUINTEN CROSS,

12 Plaintiff,

13 v.

14 A.M. GONZALES, Warden, et al.,

15 Defendant.  
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Civil No. 13CV2202-H(JMA)

**ORDER DENYING WITHOUT  
PREJUDICE MOTION FOR  
APPOINTMENT OF COUNSEL**

[Doc. No. 3]

17 Petitioner Trenton Quinten Cross, a state prisoner proceeding *pro se*  
18 and *in forma pauperis*, has requested appointment of counsel to pursue his  
19 petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254.  
20 Petitioner attacks his conviction for possession and sale of a controlled  
21 substance (Cal. Health & Saf. Code § 11352(a), § 11351.5) on the grounds  
22 the trial court erroneously admitted evidence of a prior narcotics sale in  
23 violation of his right to due process. For the reasons set forth below,  
24 Petitioner's request for appointment of counsel is **DENIED** without  
25 prejudice.

26 The Sixth Amendment right to counsel does not extend to federal  
27 habeas corpus actions by state prisoners. McClesky v. Zant, 499 U.S. 467,  
28 495 (1991); Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986), cert

1 denied, 481 U.S. 1023 (1987); Knaubert v. Goldsmith, 791 F.2d 722, 728  
2 (9th Cir. 1986), cert. denied, 479 U.S. 867 (1986). Under 18 U.S.C. §  
3 3006A(a)(2)(B), however, financially eligible habeas petitioners seeking  
4 relief pursuant to 28 U.S.C. § 2254 may obtain representation whenever a  
5 magistrate judge or the district court “determines that the interests of justice  
6 so require.” 18 U.S.C. § 3006A(a)(2), (a)(2)(B); Terrovona v. Kincheloe,  
7 912 F.2d 1176, 1181 (9th Cir. 1990), cert. denied, 499 U.S. 979 (1991).

8 The interests of justice can also require appointment of counsel when  
9 the Court conducts an evidentiary hearing on the Petition. Terrovona, 912  
10 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah v. Norris, 18 F.3d 571,  
11 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. § 2254. The appointment of  
12 counsel is discretionary when no evidentiary hearing is necessary.  
13 Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d  
14 at 573. Here, there is no current indication that an evidentiary hearing is  
15 necessary.

16 In the Ninth Circuit, “[i]ndigent state prisoners applying for habeas  
17 relief are not entitled to appointed counsel unless the circumstances of a  
18 particular case indicate that appointed counsel is necessary to prevent due  
19 process violations.” Chaney, 801 F.2d at 1196. A due process violation  
20 may occur in the absence of counsel if the issues involved are too complex  
21 for the petitioner. Id. In addition, the appointment of counsel may be  
22 necessary if the petitioner is of such limited education as to be incapable of  
23 presenting his claims. Hawkins v. Bennett, 423 F.2d 948, 950 (8th Cir.  
24 1970). When the issues involved in a section 2254 habeas action can be  
25 properly resolved on the basis of the state court record, a district court  
26 does not abuse its discretion in denying a motion for appointment of  
27 counsel. Travis v. Lockhart, 787 F.2d 409, 411 (8th Cir. 1986).

28 In the instant case, Petitioner requests counsel be appointed on his

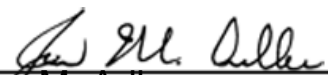
1 behalf because the legal issues are complex and he is "a layman at law  
2 with no skills to research, compare, argue and respond properly to any  
3 pleadings the court may require." [Doc. No. 3.] Petitioner has sufficiently  
4 represented himself to date. Upon review of the petition, it appears that  
5 Petitioner has a good grasp of this case and the legal issues involved. The  
6 petition in this case was pleaded sufficiently to warrant this Court's  
7 issuance of an Order to Respond, which directed Respondent to file an  
8 answer or other responsive pleading.

9 "The district court must scrutinize the state court record  
10 independently to determine whether the state court procedures and  
11 findings were sufficient." Knaubert, 791 F.2d at 729. Respondent has  
12 provided the Court with the state court records relevant to the  
13 determination of the issues presented. [Doc. No. 12.] At this stage of the  
14 proceedings, it appears that the Court will be able to properly resolve the  
15 issues presented on the basis of the state court record. Under such  
16 circumstances, a district court does not abuse its discretion in denying a  
17 state prisoner's request for appointment of counsel because it is simply not  
18 warranted by the interests of justice. See LaMere v. Risley, 827 F.2d 622,  
19 (9th Cir. 1987).

20 Based on the foregoing, the Court finds that the interests of justice do  
21 not require the appointment of counsel at this time. Petitioner's motion for  
22 appointment of counsel is, therefore, **DENIED** without prejudice.

23 **IT IS SO ORDERED.**

24 DATED: March 7, 2014

25   
26 Jan M. Adler  
27 U.S. Magistrate Judge  
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